

August 20, 2021

/via certified mail/

The Honorable Thomas A. Varlan
U.S. District Judge
Suite 143
800 Market Street
Knoxville, TN 37902

Dear Judge Varlan,

On behalf of the undersigned concerned organizations, we write to express our deep concern with the Department of Justice's decision to retry Professor Anming Hu, an Asian immigrant who has been unjustly investigated and prosecuted under the "China Initiative," and detained in his home for over a year separated from his family. As a task force of volunteers created in 2015 to address racial profiling and related justice and fairness issues, APA Justice respectfully urges you to dismiss the case and acquit Professor Hu in the best interest of justice and fairness.

Professor Hu is the first scientist and academic researcher to go to trial under the ill-conceived "China Initiative" which was launched by the Department of Justice (DOJ) in November 2018, with the purported aim of combating economic espionage and trade secret theft. The purported premise was that "[t]his Initiative will identify priority Chinese trade secret theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively." In practice, a significant percentage of the cases under the initiative are not for economic espionage or trade secret theft. We are concerned that the U.S. government has excessively criminalized Asian American and immigrant scientists – particularly those of Chinese descent – and overreached under the "China Initiative."

The trial shows that Professor Hu's case has nothing to do with theft of American trade secrets. According to the FBI's own witness testimony, the FBI initiated an economic espionage investigation against Professor Hu based on a false premise in March 2018. Despite the FBI conducting undercover surveillance of Professor Hu, and even his college-student son, they failed to find any evidence of economic espionage or any other criminal activity. In fact, according to the Knoxville News report on June 13, 2021, the FBI spread misinformation to first implicate Professor Hu as a spy for China and then tried to press him to become a spy for the U.S. government. When these efforts failed, federal prosecutors did not drop the case despite no evidence of economic espionage, raising the concern of potential pretextual prosecution.

As one juror commented after Your Honor's declaration of a mistrial, "[i]t was a ridiculous case." Professor Hu is not alone. Many more academics and researchers are facing similar prosecutions with no evidence of economic espionage under the "China Initiative." About 90 Congressional and Senate members have sent a bicameral letter to the Attorney General requesting an investigation of the alleged misconduct of the FBI agent in Professor Hu's case along with broader concerns of racial profiling under the "China Initiative."

To the Asian American community, what happened to Professor Hu and his family is part of systemic racial bias, discrimination, and profiling by the federal government against scientists and researchers of Asian descent across the country. Prior to the “China Initiative,” Dr. Wen Ho Lee, Professor Xiaoxing Xi, and Ms. Sherry Chen were also wrongfully accused of passing secrets to China.

While today’s xenophobic label used by the FBI is “Non-traditional Collectors,” it was “Thousand Grains of Sand” when Dr. Lee was tried two decades ago. Judge James Parker subsequently issued an apology for the government’s mistreatment of Dr. Lee. During World War II, the stereotypical term was the “Fifth Column” which contributed to the incarceration of 120,000 Japanese Americans based on their national origin. Although the Civil Liberties Act of 1988 was enacted to apologize to and redress the internees two generations later, these persons and their families could never be made whole again.

Except for Native Americans and Pacific Islanders, and African Americans whose ancestors were forcibly brought here, the United States is a nation of immigrants. The first Chinese persons arrived in the U.S. almost 200 years ago. Since the building of the Transcontinental Railroad, Asian Americans have contributed to every segment of the American society, including science and technology. However, from the Chinese Exclusion Act of 1882 to the present, persons of Asian origin have repeatedly been portrayed by the government as “Perpetual Foreigners” and a threat to our nation as a group. This has to change.

It is with this historical perspective and the prevailing facts in his case that we find the intent by the DOJ to retry Professor Hu to be deeply concerning and invidious. Massive amounts of taxpayers’ dollars and federal resources have already been spent without accountability to inflict enormous harm to Professor Hu and his family in the government’s zeal to hunt for a non-existent spy. Overzealous investigations such as Professor Hu’s undermines the U.S. Constitution as the government should have at least a reasonable suspicion of wrongdoing before launching an investigation and race, ethnicity or national origin should not be used to profile people.

The “China Initiative” has resulted in heightened fear within the Asian American community, undermines the integrity of our justice system, and erodes trust in our federal government and democracy. Moreover, these investigations and prosecutions have had a chilling effect on our communities such as deterring immigration to the United States and deterring Asian Americans from submitting federal grant applications and even pursuing a career in STEM fields in fear of being targeted. Many in the Asian American community fear that they are being subjected to heightened scrutiny and are not treated like other Americans due to their ethnicity.

Professor Hu has been courageous in going to trial and taking a stand for his innocence. We respectfully urge you to dismiss the case and acquit Professor Hu in the best interest of justice and fairness.

Sincerely,

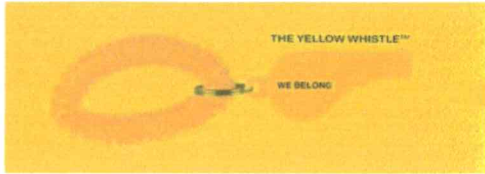
/s/ Steven Pei

/s/ Vincent Wang

/s/ Jeremy Wu

Co-organizers, APA Justice Task Force, <https://www.apajustice.org/>

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Co-signing organizations:

Asian Americans Advancing Justice | AAJC
Asian-American Community Service Council
Asian American Legal Defense and Education Fund (AALDEF)
Defending Rights & Dissent
Greater Nashville Chinese Association (GNCA)
New England Chinese American Coalition (NECAC)
Ohio Chinese American Association (OCAA)
San Francisco Community Alliance for Unity, Safety & Education (SFCause)
University of Tennessee Chapter of the American Association of University Professors

cc:

Casey Thomas Arrowood, U.S. Attorney
A. Philip Lomonaco, Defense Counsel

Jeremy Wu
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INSPECTED

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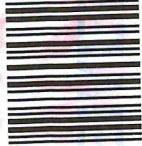
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